IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE MR.JUSTICE THOTTATHIL B. RADHAKRISHNAN

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

WP(C).No. 3752 of 2007(V)

PETITIONER:

K.K.RAMACHANDRAN MASTER,
S/O.NARAYANAN NAMBIAR, AGED 69 YEARS,
INDIRA BHAVAN, KARIYAMPADY P.O.,
MEENANGADY-VIA, WYNAD DISTRICT.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SMT.A.KUMARI MINI

RESPONDENTS:

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1. DR.K.JYOTHILAL, PRESIDENT,
AKHILA KERALA GOVERNMENT AYURVEDA COLLEGE
ADHYAPAKA SANGHADANA, THIRUVANANTHAPURAM,
SEVASADANAM, PAROTTUKONAM, NALANCHIRA,
THIRUVANANTHAPURAM.

2. KERALA LOK AYUKTA REP. BY ITS
SECRETARY, OFFICE OF THE KERALA LOK AYUKTA,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. STATE OF KERALA, REP. BY ITS
CHIEF SECRETARY TO GOVERNMENT, GOVT.
SECRETARIAT, THIRUVANANTHAPURAM.

R3 BY GOVT.PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 2/02/2007, THE COURT ON 22/02/2007 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No. 3752 OF 2007-V

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Dated this the 22nd day of February, 2007.

JUDGMENT

Does Rule 22 of the Kerala Government Servants' Conduct Rules, 1960, hereinafter referred to as the “Conduct Rules”, create a bar to jurisdiction and proceedings under the Kerala Lok Ayukta Act, 1999, hereinafter referred to as the “Act”, to act on a complaint filed by a Government servant without the written permission of the Head of office or the Government, as the case may be?

2. The first respondent, a gazetted Government servant filed Ext.P1 complaint before the Lok Ayukta, making a complaint against certain actions attributed to the petitioner. Petitioner filed Ext.P2 interlocutory application before the Lok Ayukta taking the stand that those proceedings are not maintainable in view of Rule 22 of the Conduct Rules. This

writ petition is filed alleging that the Lok Ayukta is not taking up that interlocutory application for consideration.

3. The Conduct Rules are framed primarily to govern the field of discipline among Government servants. A perusal of the said Rules, which are statutory, would show that the conduct of a Government servant is sought to be regulated in terms of public policy. Therefore, when the conduct of the Government servant in violation of the Conduct Rules results in pricking the public policy that governs the making of a particular rule, the Courts may, while deciding a lis to which he is a party, take into consideration his conduct referable to such rule among the Conduct Rules, to determine his entitlement to the assistance of the courts for relief. A classic example of this shade of jurisprudence was recognised by this Court while the Division Bench considered Rule 16(1)(b) of the Conduct Rules in **Manmadhan v. Krishnappan Unni (1985 KLT 670)**.

4. In the writ petition, it is pleaded that Rule 22 of the Conduct Rules "is equal to Section 197-A" of the Code of Criminal Procedure. In its essence, the argument advanced on behalf of the petitioner is that the said rule is similar in scope and content to Section 197(1) of the Cr.P.C. Rule 22 of the Conduct Rules reads as follows:

> **"22. Litigation.-** No Government servant shall, without the written permission of the Head of Office in the case of a non-gazetted servant and of Government in the case of a gazetted servant,-
>
> (i) take or transfer in his name any actionable claim, or decree, or
>
> (ii) concern himself in any litigation in which he has no direct personal interest."

5. Rule 22 of the Conduct Rules provides that no Government servant shall concern himself in any litigation in which he has no direct personal interest, without the written permission of the head of office or the Government.

6. The provisions relating to complaints and investigations contained in Section 9 of the Act envisage complaints involving a grievance or an allegation.

7. Section 2(h) of the Act defines a “grievance” to mean a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration. If it is a complaint involving a grievance, then Rule 22 of the Conduct Rules would, in no way, make the complaining Government servant culpable to any extent under that rule since written permission is required to be taken under that rule only when he concerns himself in a litigation in which he has no direct personal interest. The moment he has a personal interest and makes a personal grievance, it obviously escapes from the clutches of Rule 22 and there will be no speck of indiscipline in him on that count.

8. Now, the question would be as to whether those complaints, which do not amount to a grievance under

Section 2(h) of the Act, could be treated as litigations for the purpose of Rule 22 of the Conduct Rules.

9. The Act, going by its Preamble, is enacted to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto. Section 7 of the Act enumerates matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas and Section 8 enumerates matters not subject to investigation. Section 9(1) provides that any person may make a complaint under that Act to the Lok Ayukta or an Upa-Lok Ayukta, subject to the provisions of that Act. Sub-section (3) provides for conducting preliminary enquiry and for taking action to conduct any investigation in terms of

that provision. Sub-section (5) of Section 9 enjoins upon the Lok Ayukta or the Upa-Lok Ayukta to refuse to investigate or discontinue investigation of, any complaint involving a grievance or an allegation under certain contingencies. Section 12 enjoins as to what the Lok Ayukta would do and the matter of recommendation by reports, as also for the annual consolidated report etc.

10. The term "litigation" has not been defined in the Conduct Rules. It has, therefore, to gather its meaning, in the context in which it is placed and from the manner in which the said term is commonly understood. **Black's Law Dictionary** reads the term "litigation" as meaning: A lawsuit - legal action, including all proceedings therein - contest in a court of law for the purpose of enforcing a right or seeking a remedy - a judicial contest, a judicial controversy, a suit at law. The term "lis" implies the conception of an issue joined between two parties and the decision of a lis is the decision of that issue. (per **Lord Greene M.R**., in **B.Johnson & Co. (Builders) v. Minister**

of Health, (1947) 2 All E.R. 395 - See **Stroud's Judicial Dictionary**, which also notices yet another shade of the concept of lis with reference to the decision in **Butler v. Mountgarret, 7 H.L.Cas. 641** that a suit is not necessary to constitute lis. "To litigate" is to claim or dispute by action; to test or try the validity of a claim by action. It amounts to bring into or engage in litigation; to make the subject of a law suit; to contest in law; to prosecute or defend by pleadings, evidence and debate in a court. **Bouvier's Law Dictionary** states that "litigation" is a contest, authorised in law, in a court of justice, for the purpose of enforcing a right. Therein, quoting **Brown J**. in **Tyler v. Judges of Court of Registration, 179 U.S.406**, it is noticed that the prime object of all litigation is to establish a right asserted by the plaintiff or to sustain a defence asserted by the party pursued. Looking into the general dictionaries, one would find that **New Webster's Dictionary of the English Language** states that "litigation" is the act or process of litigating; the proceedings in a suit at law; a lawsuit. **The Chambers's**

Twentieth Century Dictionary notices "litigation" as the noun referable to the verb "litigate" which means to dispute, especially by a lawsuit and a litigant is one contending at law; engaged in a lawsuit.

11. Except in cases where a complaint involves a grievance, meaning thereby a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration, going by Section 2(h) of the Act, there is really no litigation as could be understood in law. In such cases, where the complaint is not one involving a grievance, there is no assertion of an individual right, vis-a-vis the alleged mal-administration which would call for a consideration of the right of parties. So much so, the complaints, which do not involve a grievance as defined in Section 2(h) of the Act, cannot be treated as litigations. Going by the provisions of the Act, those complaints, which do not involve a grievance, as already found, would not amount to a litigation as understood in law. Therefore, the question of infraction of Rule 22 of the Conduct Rules does

not arise in relation to a complaint not involving a grievance but is only one involving an allegation. Hence, Rule 22 of the Conduct Rules has no application to such cases.

12. The question raised for consideration, requires to be looked at from yet another angle. The Conduct Rules are rules made in exercise of power conferred by the proviso to Article 309 of the Constitution of India. It is apposite to read Article 309 of the Constitution of India, which is as follows:

> "**309. Recruitment and conditions of service of persons serving the Union or a State.-** Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regular the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:
>
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the

> affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

The proviso to Article 309 confers power, inter alia, for the making of rules regulating the recruitment and conditions of service. That rule and proviso is part of Chapter I relating to Services in Part XIV of the Constitution which deals with Services under the Union and the States. Rule 22 of the Conduct Rules cannot, therefore, be treated as one disabling a person from making a complaint before the Lok Ayukta in terms of Section 9 of the Act. Nor can Rule 22 of the Conduct Rules work as a bar to jurisdiction of the competent authorities under the Act.

13. Now, I shall deal with the argument on behalf of the petitioner that the effect of Rule 22 of the Conduct Rules is similar to that of Section 197(1) Cr.P.C. Those provisions are not in pari materia. Section 197(1) of the Cr.P.C. places an embargo on the court to take cognizance in cases to which the said provision applies. There is no embargo of any such nature in Rule 22. Nor can such embargo be read into that rule. So much so, I have no hesitation to overrule the said contention of the petitioner.

14. The result of the aforesaid discussion is that Rule 22 of the Conduct Rules is no bar for the Lok Ayukta to entertain any complaint. Hence, there cannot be any direction to consider Ext.P2 interlocutory application. It is held so.

15. Before parting with this matter, the case in hand calls for consideration as regards the propriety of the pleadings and the conduct of the petitioner.

16. The Kerala Lok Ayukta is impleaded as the second respondent, represented by its Secretary. The Lok Ayukta appointed under Section 3 of the Act is not to hold any other office during the term as Lok Ayukta, by virtue of Section 4 of the Act. He shall not be a member of the Parliament or of the Legislature of any State and shall not hold any office of trust or profit other than his office as Lok Ayukta or carry on any business or practice any profession. If he is practising any legal profession, he has to suspend practice of such profession before entering upon his office as Lok Ayukta. A person, who has been a member of a political party at any time during the period of five years, immediately preceding the date on which the vacancy has arisen, is not eligible to be appointed as the Lok Ayukta. The terms of office and other conditions of services of Lok Ayukta provided by Section 5 of the Act virtually insulate that office from executive tinkering. The matters which may be investigated by the Lok Ayukta in terms of Section 7 are legislatively enumerated in such manner that the office of the Lok Ayukta is a repository of high public confidence

in the matter of ensuring that the avowed objects of the Act are achieved. The term "Lok Ayukta" includes the Upa-Lok Ayuktas. It is the gravity of the power of such an office that made the legislative wisdom consider it appropriate that the qualifications for being appointed as a Lok Ayukta or Upa-Lok Ayuktas, apart from what has been noticed above, are as stated in Section 3. A person to be appointed as Lok Ayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and a person to be appointed as an Upa-Lok Ayukta shall be a person who holds or has held the office of a Judge of a High Court. The appointments of the Lok Ayukta and the Upa-Lok Ayuktas are to be on the advice tendered by the Chief Minister, in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State. The Chief Justice of the High Court concerned shall also be consulted, if a sitting Judge is to be appointed as an Upa-Lok Ayukta. A person appointed as Lok Ayukta or Upa-Lok Ayukta shall, before entering upon his office, make and

subscribe, before the Governor or a person appointed by him in that behalf, an oath or affirmation in the statutory form which requires him to swear in the name of God or solemnly affirm that he will bear true faith and allegiance to the Constitution of India, as by law established and that he will duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will. The quality of office that the Lok Ayukta and Upa-Lok Ayuktas hold, requires them to be insulated from any intentional insult or interruption or from bringing them into disrepute. Their actions, taken in good faith, are statutorily protected by Section 20 of the Act. They are conferred with the power to punish for contempt, which power is, going by Section 19 of the Act, similar to that of the High Court under the Contempt of Courts Act. Any intentional insult or interruption to the Lok Ayukta or an Upa-Lok Ayukta or bringing any of them into disrepute are punishable under Section 18 of the Act. By sub-section (2) of Section 18 of the Act, whoever, by words spoken or intended to be read,

makes or publishes any statement or does any other act, which is calculated to bring the Lok Ayukta or an Upa-Lok Ayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which shall not be less than six months but which may extend to one year or with fine, or with both, subject to the power of the Court to impose a lesser punishment, for adequate and special reasons, to be recorded. The complaint in respect of such offences is regulated by sub-section (3) of Section 18 of the Act. Such insulation of a high office discloses a legislative intention to ensure that such high offices are not tarnished by irresponsible and reckless statements. It has, therefore, to be ensured that when the procedures of such high offices or decisions taken by them are sought to be subjected to judicial review, the pleadings in such proceedings shall also be made with scrupulous care and caution that there shall be no slur, even in the slightest form, on such high offices. This is all the more necessary because, it is not every one's right to write any nonsense or speak any rot particularly when he takes recourse to a procedure prescribed by the

Rule of Law, including by seeking relief in terms of the Constitution. None shall be heard as if he is snarling at his own image. I am constrained to make these observations in the light of certain pleadings which have been made in this writ petition. The facts and grounds on which the reliefs are sought for are to be separately stated under the head of Statement of Facts and Grounds in terms of practice and procedure and the rules in force. It is a matter, not only of convention, but of abundant necessity in all jurisdictions including writ jurisdiction, that the pleadings are whetted to ensure that no baseless and irresponsible statements without any material facts and material particulars, are made. The Statement of Facts in this writ petition contained five numbered paragraphs. In Ground B, the petitioner, after stating that the Lok Ayukta ought to have acted on his interlocutory application by invoking "jurisdiction in a fair, just, reasonable, systematic and scientific manner, for upholding the principles of fairness, reasonableness and transparency in its proceedings", pleaded as follows:

> "However, the experience of the petitioner with the 2nd respondent is very bad and the 2nd respondent had even taken cognizance upon the complaint which was not even maintainable and contrary to the provisions of the Kerala Lok Ayukta Act and its Rules and made unsustainable and baseless comments in the form of orders against the petitioner finding prima facie case against the petitioner in the non-maintainable complaint, constraining the petitioner to vacate his office as the Minister for Health and Family Welfare. Later it was held by the learned Division Bench of this Hon'ble Court that the order of the 2nd respondent was unsustainable. Petitioner bonafide believes that the 2nd respondent acts with malafides and enmity against the petitioner as a tool/instrument for some of the vexatious interest."

17. The writ petitioner pleads that he was a Minister. On the docket of this writ petition, it is also shown that he is a senior citizen. His affidavit shows that he is aged 69 years when he has sworn to that affidavit on the 31st

January, 2007. The pleadings, which are quoted above, are hollow statements which none with dignity and common-sense would make. The pleadings quoted above are trash, bald and blank statements which ought to have never been made against any authority holding any office whatsoever. Law relating to the mode of pleading a case of personal bias, including material facts and material particulars, is well settled by the laws laid by the Apex Court. All such principles are totally flouted by the petitioner. There is no legal plea of bias, worth cognizance. None in high offices could be pressurised by slur and threats. The quality of pleadings is a matter that the learned members of the Bar have to ensure, even if the litigant does not know. It is unfortunate that such pleadings have found placed in a writ petition filed before this Court.

In the result, this writ petition fails. The same is accordingly dismissed.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-